

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

STEPHEN GILL and MICHELLE GILL,
husband and wife,

Plaintiffs,

vs.

CASE NO.: 05-cv-10309-MLW

UNITED STATES OF AMERICA,

Defendant.

PLAINTIFFS APPLICATION FOR DEFAULT PURSUANT TO Fed.R.Civ.P. 55(a)

Plaintiff STEPHEN GILL and Plaintiff MICHELLE GILL, husband and wife
(collectively, "Plaintiffs"), by and through their undersigned counsel, and pursuant to Fed.R.Civ.
P. 55(a), hereby requests that the Clerk of Court enter an Order of Default against Defendant
UNITED STATES OF AMERICA ("Defendant") on all Counts of Plaintiffs' Complaint, and as
reason therefor states as follows:

1. Plaintiffs filed their Complaint against Defendant on February 16, 2005 [*See* Dkt.#1], and duly served lawful process for the same upon Defendant in the manner prescribed by Fed.R.Civ. P. 4(i) and in accordance with the applicable federal laws and regulations, *inter alia* including effectuating service upon the United States Attorney District of Massachusetts, Civil Chief, on February 17, 2005. [*See* Dkt.#3].
2. Pursuant to Fed.R.Civ.P. 6(a), 6(e), 12(3)(A), and LR, D. Mass. 5.2(a), Defendant's responsive pleading was due to be filed and served on or before April 18, 2005.
3. Thereafter, Plaintiffs assented to Defendant's electronically filing and serving Defendant's Assented to Motion to Extend Time to Answer or Otherwise Respond to Complaint

via the Clerk of Court's CM/ECF system and by U.S. Mail on April 14, 2005. [See Dkt.#4].

4. Via their respective counsel, Plaintiffs apprised Defendant and Defendant acknowledged Plaintiffs' position that Plaintiffs could not assent to any further extensions of time for Defendant to file a responsive pleading to assert any defense to Plaintiffs' Complaint, and would seek entry of default under Fed.R.Civ. P. 55(a), because the Plaintiffs' Complaint establishes their claims or rights to relief by satisfactory evidence as a matter of law and therefore comports with the requirements of Fed.R.Civ.P. 55(e) for entry of judgment by default against the Defendant.

5. This Court (Wolf, J.) entered its electronic Order of April 18, 2005, via the Clerk of Court's CM/ECF system, granting Defendant's Assented to Motion to Extend Time to Answer or Otherwise Respond to Complaint and ordering the same due to be filed and served on May 18, 2005. [See Clerk's unnumbered docket entry of 4/18/05].

6. On May 17, 2005, Defendant filed and served another Motion for Extension of Time to Answer or Otherwise Respond to Complaint. [See Dkt.#5].

7. To date, Defendant's have failed to file a responsive pleading to assert any defense to Plaintiffs' Complaint.

8. As matter of law, Defendant's second Motion for Extension of Time to Answer or Otherwise Respond to Complaint [Dkt.#5] constitutes a failure to plead or otherwise defend as required for entry of default under Fed.R.Civ. P. 55(a).

9. The foregoing is attested to in Plaintiffs' accompanying Affidavit of Stephen D. Gill, *Pro Se* Plaintiff and Counsel of Record for Both Plaintiffs, in Support of Plaintiffs' Application for Default Pursuant to Fed.R.Civ.P. 55(a).

WHEREFORE, Plaintiff STEPHEN GILL and Plaintiff MICHELLE GILL, husband and wife, hereby request that the Clerk of Court enter an Order of Default against Defendant UNITED STATES OF AMERICA on all Counts of Plaintiffs' Complaint.

No Local Rule 7.1(a) Certification Required

Pursuant to LR, D.Mass. 7.1(a), Plaintiffs' undersigned counsel hereby states that he has reviewed said Local Rule and has determined that he need not confer with Defendant's counsel regarding the issues addressed in Plaintiffs' instant application for entry of default and accompanying affidavit of undersigned counsel, as the same do not constitute "motions" under LR, D.Mass. 7.1(a) or the Federal Rules of Civil Procedure

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this, the 18th day of May, 2005, I electronically filed the within document with the Clerk of Court by using its CM/ECF system which, in turn, will electronically transmit notice of the same to the following: U.S. Attorney, Civil Chief, One Court House Way, John Joseph Moakley Court House, Boston, MA 02210; and Kristen Materne, Esq., 33 College Hill Road, Suite 15G, Warwick, RI 02886. I further certify that a true and correct copy of the foregoing was sent this same day by U.S. Mail to said person(s).

A handwritten signature in blue ink, appearing to read 'Stephen D. Gill', is written over a horizontal line.

STEPHEN D. GILL
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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

STEPHEN GILL and MICHELLE GILL,
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CASE NO.: 05-cv-10309-MLW

UNITED STATES OF AMERICA,

Defendant.

STATE OF FLORIDA
COUNTY OF ESCAMBIA, SS.

**AFFIDAVIT OF STEPHEN D. GILL, *PRO SE* PLAINTIFF AND COUNSEL OF
RECORD FOR BOTH PLAINTIFFS, IN SUPPORT OF PLAINTIFFS'
APPLICATION FOR DEFAULT PURSUANT TO Fed.R.Civ.P. 55(a)**

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared the Affiant, **STEPHEN D. GILL**, known to me, and who being duly sworn, states on oath that the following is true and correct to the best of his knowledge:

1 I am Stephen D. Gill. I am over the age of 18 years and currently am employed as an attorney with the law firm, Young, Bill, Fugett & Roubos, P.A., 226 S. Palafox Place, 7th Floor, Pensacola, Florida 32502. I am a *pro se* Plaintiff and a counsel of record for Plaintiff **STEPHEN GILL** and Plaintiff **MICHELLE GILL**, husband and wife (collectively, "Plaintiffs"). I have personal knowledge about the information set forth herein.

2. Plaintiffs filed their Complaint against Defendant **UNITED STATES OF AMERICA** ("Defendant") on February 16, 2005 [*See* Dkt.#1], and duly served lawful process for the same upon Defendant in the manner prescribed by Fed.R.Civ.P. 4(i), and in accordance with the

applicable federal laws and regulations, *inter alia* including effectuating service upon the United States Attorney District of Massachusetts, Civil Chief, on February 17, 2005. [See Dkt.#3].

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Further Affiant sayeth naught.

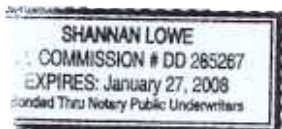
SIGNED UNDER THE PENALTIES OF PERJURY.



Stephen D. Gill, Affiant

SWORN TO AND SUBSCRIBED before me, this 18th day of May, 2005, by

Stephen D. Gill, who is personally known to me.



Shannan D. Lowe
NOTARY PUBLIC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this, the 18th day of May, 2005, I electronically filed the within document with the Clerk of Court by using its CM/ECF system which, in turn, will electronically transmit notice of the same to the following: U.S. Attorney, Civil Chief, One Court House Way, John Joseph Moakley Court House, Boston, MA 02210; and Kristen Materne, Esq., 33 College Hill Road, Suite 15G, Warwick, RI 02886. I further certify that a true and correct copy of the foregoing was sent this same day by U.S. Mail to said person(s).



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